

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

KAISER PERMANENTE OF BELLEVUE
MEDICAL CENTER and KAISER
FOUNDATION HEALTH PLAN OF
WASHINGTON,

Defendants.

CASE NO. C18-1782-JCC

ORDER

This matter comes before the Court on Defendant Kaiser Foundation Health Plan of Washington's¹ motion for summary judgment (Dkt. No. 23). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

Plaintiff was employed as an Anesthesia Technician at Defendant's Ambulatory Surgery Center from January 1, 2017, to June 14, 2017. (*See* Dkt. Nos. 25 at 1–2, 25-10 at 2.) Plaintiff worked in the surgery center's operating room, where he assisted patients under general

¹ Defendant states that “Kaiser Permanente of Bellevue Medical Center’ is not a legal entity.” (Dkt. No. 23 at 1 n.1.)

1 anesthesia while surgery was performed, and in the pain clinic, where he worked with chronic
2 pain patients. (Dkt. No. 25 at 2.) As an Anesthesia Technician, Plaintiff's job duties included
3 "assuring adequate inventory, cleaning and maintaining equipment, coordinating
4 repairs/maintenance of equipment, troubleshooting problems with anesthesia equipment,
5 assisting providers with difficult intubation, [and] communicating with patients and their
6 family." (*Id.*; see Dkt. No. 25-1 at 2–7.)

7 During Plaintiff's employment by Defendant, members of Defendant's staff reported
8 several issues with Plaintiff's performance of his job duties. On March 18, 2017, Dr. Daniela C.
9 Stafie and Dr. Susana Su discussed Plaintiff's failure to properly set up a fiberoptic scope, which
10 resulted in Dr. Su having to abandon an airway rescue to troubleshoot the equipment herself.
11 (*See* Dkt. Nos. 25 at 2, 25-2 at 2–3.) Although the patient was unharmed, Plaintiff's failure raised
12 substantial patient safety concerns and led Defendant to schedule a training for its operating
13 room employees, give Plaintiff additional training, and take Plaintiff "off the more complex
14 cases." (Dkt. No. 25 at 2–3.)

15 On March 28, 2017, Erin Cooper, a Certified Registered Nurse Anesthetist ("CRNA")
16 employed by Defendant, was working with Plaintiff when an issue arose with the
17 electrocardiogram ("EKG") tracing for a patient. (*See* Dkt. Nos. 25 at 3, 25-3 at 2–4.) The EKG
18 was failing to properly trace and "there was a specific issue with artifact and a secondary V lead
19 tracing popping up that was specific to" the EKG's "module/box attached to the monitor." (Dkt.
20 No. 25-3 at 3.) According to Cooper, Plaintiff repeatedly attempted the same troubleshooting
21 step to no avail. (*See* Dkt. Nos. 25 at 3, 25-3 at 3.) Cooper eventually asked Plaintiff to retrieve a
22 new module, and he did so. (*See* Dkt. No. 25-3 at 3.) Shortly thereafter, Jewel Hagan, another
23 CRNA employed by Defendant, encountered the same unique issue in an EKG in another
24 patient's room; Cooper believed that Plaintiff had swapped the faulty EKG module for another
25 instead of taking the faulty module out of circulation. (*Id.*) When asked about the incident,
26 Plaintiff denied having changed out the faulty EKG module in the first place. (*Id.*)

1 On March 31, 2017, Hagan was assisting with a surgery when she noticed that the pulse
2 oximeter was malfunctioning. (Dkt. No. 25-4 at 2.) Hagan asked Plaintiff “to ‘bring me a whole
3 new pulse oximeter cable’” but Plaintiff brought “just the finger probe.” (*Id.*) After a new cable
4 was eventually obtained, Hagan asked Plaintiff if he had taken the faulty cable out of circulation,
5 to which Plaintiff replied, “No, I tried it on myself and it worked.” (*Id.*) Hagan explained to
6 Plaintiff that the faulty cable had to be taken out of circulation to ensure patient safety and to
7 avoid spending time on future troubleshooting. (*Id.*)

8 On April 4, 2017, Plaintiff sent Defendant an email stating that he intended to resign his
9 position and that Defendant should begin looking for a replacement. (Dkt. Nos. 25 at 3, 25-5 at
10 3–4.) When Defendant offered to provide Plaintiff with an improved orientation to cure his
11 performance issues, Plaintiff stated that he did not feel appreciated or respected while employed
12 by Defendant. (*See* Dkt. No. 25-5 at 3) (“For Dr. Stafie to go as far as to tell the girls that she
13 does not like me or does not want me in her room and would tell Dr. [Hugh] Allen to fire me
14 because I’m too slow, it’s not appreciative and supportive to me.”). When Dan Perrow,
15 Defendant’s Senior Director in Care Delivery, heard of Plaintiff’s email, he stated that he
16 “want[ed] to do all we can to support [Plaintiff] and help him have a successful career with”
17 Defendant. (*Id.* at 2.)

18 On April 11, 2018, Sheila Waddle, Plaintiff’s supervisor, Perrow, and Dr. Allen
19 discussed Plaintiff’s performance issues. (*See* Dkt. No. 25-6 at 2–4.) Dr. Allen stated that
20 Plaintiff lacked the level of communication skills necessary for his position, and Waddle noted
21 that Dr. Stafie felt “that [Plaintiff] could be a safety risk due to his poor performance.” (*Id.* at 2–
22 3.) Nonetheless, the parties agreed that Plaintiff would be given additional time to improve his
23 performance. (*See id.*; Dkt. No. 25 at 4.)

24 On April 18, 2017, Hagan reported additional problem with Plaintiff’s job performance.
25 (*See* Dkt. No. 25-7 at 2.) Hagan’s concerns including Plaintiff’s failure to restock important
26 drugs, failure to properly assist with placement of an oral endotracheal tube, failure to replace a

1 used blade between cases, failure to adequately prioritize his work tasks, and premature disposal
2 of drugs before the patient was out of the operating room or cleared by the anesthesia provider.
3 (*See id.*; Dkt. No. 25 at 4.)

4 Given Plaintiff's intent to resign and his poor job performance, Defendant issued a job
5 posting for Plaintiff's position. (*See* Dkt. No. 25 at 4.) On April 25, 2017, Plaintiff emailed
6 Waddle to reiterate his intent to resign and to notify her that he had been getting offers with
7 better pay and benefits. (Dkt. No. 25-11 at 2.) Because Defendant's pain clinic was short-staffed
8 at the time, Waddle responded that Defendant hoped that Plaintiff could work for an additional
9 30 days while Defendant searched for his replacement. (*Id.*; Dkt. No. 25 at 4.) Ultimately,
10 Plaintiff agreed to continue to work in the pain clinic through June 2017 pending his resignation.
11 (Dkt. Nos. 25 at 4, 25-8 at 2.)

12 On May 25, 2017, Hagan reported further issues with Plaintiff's job performance,
13 including his failures to "appreciate the importance of induction and securing the airway as being
14 the top priority when he was assisting" Hagan and to properly prioritize other tasks while
15 assisting. (Dkt. No. 25-9 at 4.) Following Hagan's report, Dr. Stafie, Dr. Allen, and Waddle
16 discussed appropriate next steps. Dr. Stafie noted that "since [Plaintiff] started working, the
17 anesthesia providers had multiple concerns to the point that if he were part of a sentinel event," a
18 situation where Plaintiff's mistakes contributed to the loss of a patient, it "would be difficult to
19 explain." (Dkt. Nos. 25 at 4, 25-9 at 3.) Dr. Stafie, Dr. Allen, and Waddle agreed that while
20 Plaintiff had been told earlier that he would be working for an additional 30 days, it would be
21 best for patient safety if Plaintiff was let go earlier. (*See* Dkt. No. 25-9 at 1-4.)

22 On June 1, 2017, Plaintiff signed a resignation letter which stated that his last date of
23 working for Defendant would be June 2, 2017, and that his effective resignation date would be
24 June 14, 2017. (Dkt. No. 25-10 at 2.) Prior to June 1, 2017, Plaintiff consistently stated that he
25 planned to resign. (*See* Dkt. Nos. 25 at 5, 25-11 at 2-4.)

26 On October 1, 2017, Plaintiff filed an Equal Employment Opportunity Commission

1 (“EEOC”) complaint. (*See* Dkt. No. 27 at 14.) Plaintiff alleged that Dr. Stafie subjected him to
 2 disparate treatment because “she criticized my performance and spoke poorly of me to
 3 coworkers,” that Plaintiff believed he had been discriminated against based on his race, color,
 4 and national origin, and that he complained to Waddle in April 2017. (*See* Dkt. No. 27 at 14.) On
 5 September 18, 2018, following an evidentiary review, the EEOC found that it “was unable to
 6 establish a violation of its statutes as [Plaintiff] had alleged in [his] charge” and dismissed
 7 Plaintiff’s EEOC complaint. (*See* Dkt. No. 1-1 at 1–2.)

8 On December 11, 2018, Plaintiff, proceeding *pro se*, filed his complaint in this action.
 9 (*See* Dkt. No. 1.) Plaintiff’s complaint alleges that Defendant discriminated against him based on
 10 his race, color, and national origin, retaliated against him, and subjected him to a hostile work
 11 environment. (*See id.* at 15–17.) Plaintiff further asserts that Defendant was negligent in its
 12 supervision, hiring, and training of employees and both intentionally and negligently inflicted
 13 emotional distress upon Plaintiff. (*Id.* at 17–18.) Defendant moves for summary judgment. (Dkt.
 14 No. 23.)

15 **II. DISCUSSION**

16 **A. Conceded Claims**

17 Defendant moves for summary judgment on all of Plaintiff’s claims. (*See generally* Dkt.
 18 No. 23.) In his response, Plaintiff, now represented, “concedes the claims of negligent infliction
 19 of emotional distress; negligent supervision/hiring/failure to properly train; and intentional
 20 infliction of emotional distress.” (Dkt. No. 26 at 1.) Accordingly, Defendant’s motion for
 21 summary judgment is GRANTED as to these claims.

22 **B. Legal Standard**

23 “The court shall grant summary judgment if the movant shows that there is no genuine
 24 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
 25 Civ. P. 56(a). Material facts are those that may affect the outcome of the case, and a dispute
 26 about a material fact is genuine if there is sufficient evidence for a reasonable jury to return a

1 verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).
2 In deciding whether there is a genuine dispute of material fact, the court must view the facts and
3 justifiable inferences to be drawn therefrom in the light most favorable to the nonmoving party.
4 *Id.* at 255. The court is therefore prohibited from weighing the evidence or resolving disputed
5 issues in the moving party’s favor. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

6 “The moving party bears the initial burden of establishing the absence of a genuine issue
7 of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “If a moving party fails to
8 carry its initial burden of production, the nonmoving party has no obligation to produce anything,
9 even if the nonmoving party would have the ultimate burden of persuasion at trial.” *Nissan Fire*
10 *& Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000). But once the moving
11 party properly supports its motion, the nonmoving party “must come forward with ‘specific facts
12 showing that there is a *genuine issue for trial*.’” *Matsushita Elec. Indus. Co. v. Zenith Radio*
13 *Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Ultimately, summary judgment
14 is appropriate against a party who “fails to make a showing sufficient to establish the existence
15 of an element essential to that party’s case, and on which that party will bear the burden of proof
16 at trial.” *Celotex*, 477 U.S. at 322.

17 Washington courts have stated that summary judgment “should rarely be granted in
18 employment discrimination cases,” *Sangster v. Albertson’s, Inc.*, 991 P.2d 674, 677 (Wash. Ct.
19 App. 2000), and the Ninth Circuit has stated that “very little evidence” is needed “to survive
20 summary judgment in a discrimination case, because the ultimate question is one that can only be
21 resolved through a searching inquiry—one that is most appropriately conducted by the
22 factfinder, upon a full record,” *Lowe v. City of Monrovia*, 775 F.2d 998, 1005 (9th Cir. 1985), *as*
23 *amended*, 784 F.2d 1407 (9th Cir. 1986) (internal quotations omitted). But a plaintiff must offer
24 more than “uncorroborated and self-serving” testimony to create “‘a sufficient disagreement to
25 require submission to a jury.’” *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996)
26 (quoting *Anderson*, 477 U.S. at 251–52).

1 **C. Disparate Treatment**

2 Title VII and the WLAD make it unlawful for an employer to discriminate on the basis of
 3 several protected classes, including race, national origin, and color. 42 U.S.C. § 2000e–2(a)(1);
 4 Wash. Rev. Code § 49.60.180. A plaintiff may establish a *prima facie* case of discrimination
 5 either through “a presumption arising from the factors such as those set forth in *McDonnell*
 6 *Douglas*, or by more direct evidence of discriminatory intent.” *Godwin v. Hunt Wesson, Inc.*, 150
 7 F.3d 1217, 1220 (9th Cir. 1998), *as amended* (Aug. 11, 1998); *see Blackburn v. State*, 375 P.3d
 8 1076, 1080 (Wash. 2016) (noting that “Washington courts often look to federal case law on Title
 9 VII when interpreting the WLAD”).

10 “Direct evidence is evidence which, if believed, proves the fact [of discriminatory
 11 animus] without inference or presumption.” *Godwin*, 150 F.3d at 1221 (quoting *Davis v.*
 12 *Chevron, U.S.A., Inc.*, 14 F.3d 1082, 1085 (5th Cir.1994)). If a plaintiff lacks direct evidence,
 13 courts look to the *McDonnell Douglas* burden-shifting framework to analyze both Title VII and
 14 WLAD discrimination claims. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04
 15 (1973) (Title VII claim); *Hines v. Todd Pac. Shipyards Corp.*, 112 P.3d 522, 529 (Wash. Ct.
 16 App. 2005) (WLAD claim). To establish a *prima facie* case under Title VII, a plaintiff must
 17 show that (1) he is a member of a protected class, (2) he performed his job satisfactorily, (3) he
 18 suffered an adverse employment action, and (4) the defendant treated him differently from a
 19 similarly-situated employee who does not belong to the same protected class. *See Cornwell v.*
 20 *Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006). And under the WLAD, the
 21 plaintiff must show that: (1) he belongs to a protected class; (2) he was treated less favorably in
 22 the terms or conditions of his employment (3) than a similarly situated, non-protected employee,
 23 and (4) the plaintiff and the non-protected comparator were doing substantially the same work.
 24 *See Washington v. Boeing Co.*, 19 P.3d 1041, 1048 (Wash. Ct. App. 2000).

25 If the plaintiff establishes his *prima facie* case, the burden shifts to the defendant to
 26 articulate a legitimate, nondiscriminatory reason for its action. *See McDonnell Douglas*, 411 U.S.

1 at 802–04; *Hines*, 112 P.3d at 529. If the defendant does so, the plaintiff must then prove, by a
2 preponderance of the evidence, that the reason asserted by the defendant is a mere pretext. *See*
3 *McDonnell Douglas*, 411 U.S. at 802–04; *Hines*, 112 P.3d at 529.

4 Here, Plaintiff asserts that he has direct evidence of unlawful discrimination, citing his
5 deposition testimony and his EEOC complaint. (Dkt. No. 26 at 3–4.) In his deposition, Plaintiff
6 stated that his coworker Vira Feltsan told him in April or May 2017 that Dr. Stafie had asked
7 Plaintiff’s coworkers, “Which part of Africa is he from?” (Dkt. No. 27 at 9–10; *see* Dkt. No. 1 at
8 6.) When pressed about why he did not mention the incident prior to filing his EEOC complaint
9 in October 2017, Plaintiff stated that he verbally told Waddle in her office around April or May
10 2017. (Dkt. No. 27 at 10.)

11 Plaintiff also stated that Dr. Stafie “favored two anesthesia techs over me . . . because she
12 can easily communicate with those two techs in her own language, so I’m kind of like . . .
13 discriminated . . . she favored them over me.” (*Id.* at 12.)² Plaintiff elaborated, saying that
14 “[e]ven though they are doing, like, things that are annoying that are not—she should yell at
15 them or she should . . . own it and be professional, treating us equally. I was not treating—I was
16 not treated fairly as the other two techs.” (*Id.*)

17 Plaintiff has not offered evidence corroborating his deposition testimony and his
18 allegations in his EEOC complaint, such as contemporaneous documentary evidence of Dr.
19 Stafie’s alleged question about his country of origin or evidence of her alleged preferential
20 treatment of Plaintiff’s coworkers. (*See* Dkt. Nos. 26 at 2, 4; 27 at 5–14.)³ Standing alone,
21

22 ² In his complaint, Plaintiff stated that Dr. Stafie is from Romanian and speaks Romanian
23 and Moldavian. (*See* Dkt. No. 1 at 4–5.) Plaintiff alleges that Dr. Stafie “admires and treats the
24 two white female Techs better especially Ms. Machela Palanchuk who speaks the same language
as Dr. Daniela Stafie because Ms. Machela Palanchuk is Moldavian and Romanian.” (*Id.* at 6.)

25 ³ In his April 5, 2017 email to Waddle, Plaintiff stated that Feltsan informed him that Dr.
26 Stafie told other staff “that she does not like [Plaintiff] or does not want [Plaintiff] in her room
and would tell Dr. Allen to fire me because I’m too slow . . .” (Dkt. No. 25-5 at 3.) Plaintiff’s
email does not mention any discussion of Plaintiff’s race or county of origin.

1 Plaintiff's self-serving and uncorroborated testimony and allegations are insufficient to create a
 2 genuine dispute of fact that requires submission to a jury. *See Kennedy*, 90 F.3d at 1481.
 3 Moreover, Plaintiff's reliance on Feltsan's alleged statement regarding Dr. Stafie's question
 4 about Plaintiff's country of origin is misplaced: such a statement is clearly hearsay that cannot
 5 overcome a motion for summary judgment. *See Urbina v. Gilfilen*, 411 F.2d 546, 547–48 (9th
 6 Cir. 1969); *Walker v. Boeing Corp.*, 218 F. Supp. 2d 1177, 1191–92 & 1192 n.9 (C.D. Cal. 2002)
 7 (collecting cases). Thus, Plaintiff has not offered direct evidence of discrimination under Title
 8 VII or the WLAD. *See Godwin*, 150 F.3d at 1221; *Blackburn*, 375 P.3d at 1080.

9 Plaintiff has not argued that he is able to establish discrimination under Title VII or the
 10 WLAD using the *McDonnell Douglas* burden-shifting framework. (*See* Dkt. No. 26 at 4.) Nor
 11 could he. Defendant has submitted substantial evidence of Plaintiff's poor performance of his job
 12 duties, including his failure to effectively troubleshoot faulty equipment, his failure to take faulty
 13 equipment out of circulation, and his failure to effectively assist with procedures. (*See generally*
 14 Dkt. Nos. 25, 25-1—25-4, 25-6—25-7, 25-9.) Plaintiff has not offered evidence showing that he
 15 was in fact ably performing his job duties. (*See* Dkt. Nos. 26 at 4, 27 at 5–15.)⁴ Therefore,
 16 Plaintiff cannot establish the job performance element of a *prima facie* case of discrimination
 17 under *McDonnell Douglas* or establish that Defendant's legitimate, non-discriminatory reason
 18 for accepting his resignation was pretextual. *Cornwell*, 439 F.3d at 1028; *Hines*, 112 P.3d at 529.

19 In sum, Plaintiff has not offered direct evidence of discrimination or established a claim
 20 for unlawful discrimination by satisfying the burden-shifting framework set forth in *McDonnell*
 21 *Douglas*. *See Godwin*, 150 F.3d at 1220; *Blackburn*, 375 P.3d at 1080. Therefore, Defendant's
 22 motion for summary judgment is GRANTED as to Plaintiff's disparate treatment claims arising
 23 under Title VII and the WLAD.

24
 25 ⁴ During his deposition, Plaintiff stated that Cooper and Hagan had made "false
 26 allegations" against him regarding his poor job performance at the behest of Dr. Stafie. (*See* Dkt.
 No. 24-1 at 13.) When pressed, Plaintiff stated that he did not have any evidence that Dr. Stafie
 had asked Cooper and Hagan to make false allegations against him. (*Id.* at 13–15.)

1 **D. Retaliation**

2 Title VII and the WLAD prohibit an employer from retaliating against a person who
3 engages in protected activities. *See* 42 U.S.C. § 2000e-5; Wash. Rev. Code § 49.60.210. To
4 prevail on a retaliation claim under both Title VII and the WLAD, a plaintiff must show that he
5 was engaged in a protected activity, that he suffered an adverse employment action, and that
6 there is a causal connection between the protected activity and the adverse employment action.
7 *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 965 (9th Cir. 2004); *Lodis v. Corbis*
8 *Holdings, Inc.*, 292 P.3d 779, 786 (Wash. Ct. App. 2013).

9 Title VII and the WLAD require the same showings under the first two elements. *See*
10 *Ellorin v. Applied Finishing, Inc.*, Case No. 12-1932-JRL, Dkt. No. 51 at 31 (W.D. Wash. 2014).
11 Making an informal complaint to a supervisor about racial discrimination may satisfy the first
12 element. *See Knight v. Brown*, Case No. C10-0753-JLR, Dkt. No. 85 at 40–41 (W.D. Wash.
13 2011). To satisfy the adverse action prong “a plaintiff must show that a reasonable employee
14 would have found the challenged action materially adverse, which . . . means it might have
15 dissuaded a reasonable worker from making or supporting a charge of discrimination.”
16 *Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotations
17 omitted). To establish causation under Title VII, a plaintiff must show that his protected activity
18 was a “but-for” cause of the adverse employment action. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*,
19 133 S. Ct. 2517, 2521 (2013). Under the WLAD, a plaintiff must merely show that the protected
20 activity was a “substantial factor” in the employer’s decision to take the adverse employment
21 action. *Allison v. Housing Auth. of City of Seattle*, 821 P.2d 34, 42–43 (1991).

22 Causation may be established with “circumstantial evidence, such as the employer’s
23 knowledge that [the plaintiff] engaged in protected activities and the proximity in time between
24 the protected action and the allegedly retaliatory employment action.” *Yartzoff v. Thomas*, 809
25 F.2d 1371, 1376 (9th Cir. 1987). “But timing alone will not show causation in all cases; rather, in
26 order to support an inference of retaliatory motive, the termination must have occurred fairly

1 soon after the employee's protected expression." *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d
2 1054, 1065 (9th Cir. 2002) (internal quotations omitted).

3 If the plaintiff establishes a *prima facie* case of retaliation, the burden shifts to the
4 defendant to offer legitimate, non-retaliatory reasons for the adverse employment action. *See*
5 *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464–65 (9th Cir. 1994); *Short v. Battle*
6 *Ground Sch. Dist.*, 279 P.3d 902, 911 (Wash. Ct. App. 2012). If the defendant does so, the
7 burden shifts to the plaintiff to show that the proffered reasons are pretextual. *Steiner*, 25 F.3d at
8 1465; *Short*, 279 P.3d at 912.

9 Here, in response to Defendant's motion for summary judgment Plaintiff asserts that he
10 engaged in protected activity when he informed Waddle of the discriminatory treatment, that he
11 was forced to resign, and that the fact he was released two months after his report "establishes a
12 clear causal inference." (Dkt. No. 26 at 5.) Plaintiff thus asserts that he "has established a *prima*
13 *facie* case for retaliation and defendants' motion for summary judgment should be denied." (*Id.*)

14 The Court is skeptical of Plaintiff's assertion that he has established a *prima facie* case of
15 retaliation under either Title VII or the WLAD. As discussed above, Plaintiff's claim of
16 discrimination rests on his uncorroborated and self-serving testimony and EEOC allegations
17 concerning an isolated question about his country of origin and Dr. Stafie's purported preference
18 for working with employees who spoke her native language. *See supra* Section II.C. Plaintiff
19 relies solely on temporal proximity and Defendant's purported knowledge of his report, which
20 are not necessarily sufficient to satisfy the causation element under either Title VII or the
21 WLAD. *See Drott v. Park Electrochemical Corp.*, 2013 WL 6157858, slip op. at 14–16 (D.
22 Ariz. 2013); *Allison*, 821 P.2d at 42–43. And Plaintiff's claim that he was forced to resign is
23 belied by the allegations in his complaint and evidence in the record. (*See* Dkt. Nos. 1 at 14–15;
24 25 at 3, 5; 25-5 at 3–4; 25-11 at 2–4; 27 at 15.)

25 Nonetheless, the Court need not decide those issues. As discussed above, Defendant has
26 submitted substantial evidence of Plaintiff's poor performance of his job duties, which were

1 repeatedly noted by his coworkers and supervisors and raised significant patient safety concerns.
2 (*See generally* Dkt. Nos. 25, 25-1—25-4, 25-6—25-7, 25-9.) Plaintiff has not addressed his
3 burden of establishing that Defendant’s legitimate, non-retaliatory reason for accepting
4 Plaintiff’s resignation was pretextual or offered evidence showing the same. (*See* Dkt. Nos. 26 at
5 4, 24-1 at 13–15, 27 at 5–15.) Therefore, even if Plaintiff has established a *prima facie* case of
6 retaliation under Title VII and the WLAD, he has not carried his burden of showing that
7 Defendant’s legitimate, non-retaliatory reason for accepting his resignation was pretextual. *See*
8 *Steiner*, 25 F.3d at 1465; *Short*, 279 P.3d at 912. Accordingly, Defendant’s motion for summary
9 judgment is GRANTED as to Plaintiff’s claims of unlawful retaliation under Title VII and the
10 WLAD.

11 **E. Hostile Work Environment**

12 Hostile work environment claims arising under Title VII and the WLAD are analyzed
13 under the same framework following Washington’s adoption of the test set forth by the Supreme
14 Court in *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002). *See*
15 *Antonius v. King County*, 103 P.3d 729, 737 (Wash. 2004). Thus, to prevail on a hostile work
16 environment claim premised on race under Title VII or the WLAD, the plaintiff must show: “(1)
17 that he was subjected to verbal or physical conduct of a racial . . . nature; (2) that the conduct
18 was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the
19 conditions of the plaintiff’s employment and create an abusive work environment.” *Vasquez v.*
20 *City of Los Angeles*, 349 F.3d 634, 642 (9th Cir. 2003), *as amended* (Jan. 2, 2004). The court
21 examines “all the circumstances, including the frequency of the discriminatory conduct; its
22 severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and
23 whether it unreasonably interferes with an employee’s work performance.” *Id.* (quoting *Clark*
24 *Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 270–71 (2001)). The “environment must both
25 subjectively and objectively be perceived as abusive.” *Id.* (quoting *Brooks v. City of San Mateo*,
26 229 F.3d 917, 923 (9th Cir. 2000)). “Simple teasing, offhand comments, and isolated incidents

(unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.” *Manatt v. Bank of Am., NA*, 339 F.3d 792, 798 (9th Cir. 2003) (internal alterations and quotations omitted). Ninth Circuit caselaw establishes a high burden to finding a hostile work environment. *See id.* at 798–99 (collecting cases).

Although Plaintiff does not explicitly concede his hostile work environment claim, his response to Defendant’s motion for summary judgment is silent as to this claim. (*See generally* Dkt. No. 26.) And the record shows that Defendant is entitled to summary judgment in its favor on this ground. As discussed above, Plaintiff has only asserted two instances of racial discrimination: Dr. Stafie’s alleged question about his country of origin and Dr. Stafie’s purported favoring of employees who spoke her native languages. *See supra* Section II.C. Plaintiff has not offered evidence showing that either instance of alleged discrimination was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive work environment, especially given the high bar set by Ninth Circuit case law. *See Vasquez*, 349 F.3d at 642; *Manatt*, 339 F.3d at 798–99. Therefore, Defendant’s motion for summary judgment is GRANTED as to Plaintiff’s hostile work environment claim.

III. CONCLUSION

For the foregoing reasons, Defendant’s motion for summary judgment (Dkt. No. 23) is GRANTED and Plaintiff’s claims are DISMISSED with prejudice.

DATED this 26th day of May 2020.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE